



**EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL
AFFAIRS**

**Richard K. Sullivan, Jr., Secretary
Grant Announcement**

**Request for Responses (RFR) ENV 14 DCS 04
Posting Date: April 16, 2013**

**Drinking Water Supply Protection Grant
FY 2014**

1. GRANT OPPORTUNITY SUMMARY:

A. PROPOSALS SOUGHT FOR: Financial assistance to public water systems and municipal water departments for the purchase of land in existing DEP-approved drinking water supply protection areas, or land in protection areas of identified and planned future water supply wells or intakes, or land identified and planned to be used for groundwater recharge to an aquifer.

B. OVERVIEW AND GOALS: The Executive Office of Energy and Environmental Affairs (EEA) protects, conserves, and restores the natural resources of the Commonwealth. To fulfill this mission, Richard K. Sullivan, Jr., Secretary of EEA, announces the FY 2014 Drinking Water Supply Protection (DWSP) Grant Program. This grant provides funds to assist public water systems and municipal water departments in protecting and conserving the quality and quantity of public drinking water supply sources in the Commonwealth. This is a reimbursement program.

C. ELIGIBLE PROJECTS:

- 1) Purchase of land in fee
- 2) Purchase of a Conservation Restriction (CR)
- 3) Purchase of a Watershed Preservation Restriction (WPR)

See further detail on eligible projects in section 2B.

D. ELIGIBLE APPLICANTS: This RFR is open to municipalities and non-profit public water systems (PWSs) authorized by the Commonwealth to provide drinking water to the public. See further detail on eligible applicants in section 2A.

E. APPLICATION DEADLINE: Tuesday, July 31, 2013, 5:00pm

See further detail on deadlines and grant program calendar in section 4.

F. FUNDING AVAILABILITY: Maximum reimbursement available: \$350,000.

See further detail on funding availability in section 2E.

G. BUDGET REQUIREMENT: Applicants selected to receive grant funding must show authorization to expend funds equal to the total project amount, and to accept the grant award. They must show the use of funds from non-state sources. Only approved project costs incurred within the contract period will be eligible to receive reimbursement. See further detail on budget requirement in section 2F.

H. TOTAL ANTICIPATED DURATION OF CONTRACT(S): The contract period will begin on the date that EEA signs the contract. Contracts issued pursuant to this RFR must purchase the property and expend 100%

of the approved project costs on or before the end of the fiscal year (June 30, 2013 for fiscal year (FY) 2014 awards; June 30, 2015 for FY2015 awards) in order to be eligible for reimbursement. See further detail on anticipated duration of contract(s) in section 2F.

I. REGULATIONS, STATUTES, OR AUTHORIZATION GOVERNING THIS GRANT PROGRAM: This RFR is issued according to M.G.L. c. 40, §39B and 41. It is funded through Chapter 312 of the Acts of 2008, § 2A, 2200-7017. All properties for which grant assistance is provided will become protected open space under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, dedicated to water supply use and land conservation. This program provides funding for acquisitions of interests in land only; funding through the DWSP program does not replace or constitute approval of any proposed development of new drinking water sources or groundwater recharge or wastewater discharge. Applicants must adhere to all relevant DEP regulations and approval processes.

J. CONTACT INFORMATION: Celia Riechel
Executive Office of Energy and Environmental Affairs
100 Cambridge Street – Suite 900
Boston, MA 02114
617-626-1187
celia.riechel@state.ma.us

2. Performance and Contract Specifications

A. ELIGIBLE APPLICANTS:

Municipalities and non-profit public water systems (PWS). The Massachusetts Water Resources Authority and state agencies are not eligible for funding.

Applicants must have:

1. **Authorization to acquire the property**, expend funds, and accept the grant award.
Municipalities and public water systems: obtain authorization from town meeting or city council vote.
Non-municipal public water systems: obtain authorization through a vote of Board of Water Commissioners, or Selectboard acting as such.
The vote must identify the particular parcel to be acquired and contain authorization to seek funding under the DWSP grant (Chapter 312 of the Acts of 2008, § 2A, 2200-7017), and to enter into any contracts for the project, as well as permit the conveyance of a conservation restriction if a CR is applicable to the project, or conveyance of a license or lease for maintenance or other compatible property use. It is not advisable to restrict the vote to a specific dollar amount of state funding or property acreage, as these may change. The Board of Water Commissioners (or Board of Selectmen/City Council authorized as such under M.G.L. c. 40, §39A) must be designated to hold and manage the property for water supply protection and land conservation purposes under M.G.L. c. 40, §39B and 41, and Article 97 of the Amendments to the Massachusetts Constitution. The vote may be contingent upon receiving grant funding.
2. **DEP approval** of the acquisition of land for public drinking water supply purposes. A DWSP grant award constitutes preliminary DEP approval to acquire the property, however, it must be finalized through a public hearing at a DEP regional office. Details are available at <http://www.mass.gov/dep/water/index.htm>. The following is a summary of the steps:
 1. Grantee submits a Permit Application (form BRP WS-26) for Land Acquisition and

- requests a public hearing date.
2. DEP schedules a public hearing in the appropriate regional office and provides grantee with public hearing instructions.
3. Grantee notifies abutters and places a public notice in the newspaper.
4. Grantee submits draft documents and proof of abutter notification to DEP.
5. Public hearing is held at DEP regional office.
6. DEP issues Grantee a final approval letter.

Further, open space protection may qualify as mitigation for increased water withdrawal under the Sustainable Water Management Initiative framework (<http://www.mass.gov/dep/water/resources/swmi.htm>), and as regulated by the MA Water Management Act. Care should be taken to understand the implications any anticipated additional withdrawals from the subwatershed may have under the framework.

3. **No unresolved protected open space conversion issues** with EEA (see EEA Article 97 Disposition Policy at: <http://www.mass.gov/eea/agencies/mepa/about-mepa/eea-policies/eea-article-97-land-disposition-policy.html>).
4. **No current enforcement orders** or orders of non-compliance.

B. ELIGIBLE PROJECT(S)/SCOPE(S) OF WORK:

EEA seeks to further the conservation of suitable water supply land within the Commonwealth. Applications may be to purchase land in fee simple or a Conservation Restriction (CR) or Watershed Preservation Restriction (WPR).

The Property must:

1. **Be primarily located in an existing or potential public water supply protection area.** Fifty percent (50%) or more of the parcel(s) to be acquired must be located in an identified drinking water supply protection area. This requirement can be met in slightly different ways depending upon whether the project is to protect an existing well or intake, a planned future well or intake, or a groundwater recharge area.
 - a. **Existing wells or intakes:** must be located in a DEP-approved Zone I, II, or III (groundwater) or Zone A, B or C (surface water). Applicants may use the Water Supply Protection Areas available from MassGIS or use the online map located here: <http://maps.massgis.state.ma.us/images/dep/omv/wspviewer.htm>.
 - b. **Future wells or intakes:** property must be located within a potential public water supply protection area. Land should be in areas that have been identified as of value for future water supply use through an appropriate process, or that have been tested and included in an application to DEP for a site exam under the new source review approval process. Appropriate planning processes include locally developed and accepted plans such as: drinking water resource management plan, integrated water resource management plan, wastewater resource management plan, regional watershed plan, water assets report, or direct testing.. Documentation of this planning should be submitted with the application.
 - c. **Groundwater recharge areas:** property must

- i. be predominantly classified as hydrologic soil Groups A or B (gravel, sandy, sandy loams) (see NRCS publication *Hydrologic Soil Groups*, available here: <http://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17757.wba>. You may access soil survey data for specific geographies at the NRCS Web Soil Survey: <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>. Hydrologic soil group is under the “Soil Properties and Qualities” tab, in the “Soil Qualities and Features” section).
- ii. have an infiltration rate of less than 30 minutes per inch (more than 2 inches per hour)
- iii. be otherwise suited to the purpose
- iv. have been identified through an appropriate planning process as a priority for groundwater recharge and likely to be suitable for such purposes (see § VI in *Guidelines for the Design, Construction, Operation, and Maintenance of Small Wastewater Treatment Facilities with Land Disposal*, available from DEP, and 314 CMR 05, for site evaluation and criteria for discharge). Documentation of this planning must be submitted with the application.

Ineligible recharge projects: Properties will be deemed ineligible for acquisition for recharge purposes under any of the following conditions:

- a) Projects to acquire land for groundwater recharge that lie within Zone I or Zone A and other activities specifically restricted in 314 CMR § 5.06.
- b) Projects with soils that are predominantly classified as hydrologic soil Groups C or D (silty clay loam, silty clay, or clay), as classified by the USDA Natural Resources Conservation Service (NRCS). In cases of incomplete or potentially inaccurate NRCS soil data, applicants may procure an independent soil analysis; if NRCS has classified the project parcel(s) soils as Group C or D, the results of the independent analysis must be included in the application.
- c) Projects with an average site infiltration rate of greater than 30 minutes per inch (2 inches per hour).
- d) Projects with less than a one year travel time to the nearest public drinking water supply well.

A summary of hydrologic soil groups and infiltration rates is located in Attachment E.

Note: this grant does not provide funding for infrastructure planning, design, or construction.

2. **Not include Zone I designated after 1990.** Parcels located in a Zone I are eligible to receive funding only if well construction was approved by DEP prior to June 6, 1990. Projects including Zone I land for wells approved after this date may receive funding for Zone II and III portion. The appraiser should estimate the value of the Zone I area and subtract this from the total property value.
3. **Be currently unprotected.** This includes properties protected under Article 97 either through an EEA grant program (Local Acquisitions for Natural Diversity (LAND), Parkland Acquisition or Renovation for Communities (PARC), Conservation Partnership); a Conservation Restriction (CR); Agricultural Preservation Restriction (APR); land acquired for Article 97 purposes; or other land protected under Article 97. Lands enrolled in Chapter 61, 61A or 61B are not classified as permanently protected land and are eligible to receive funding.
4. **Not already be owned by the applicant municipality.** Only property purchased *after* receiving an executed contract from EEA will be reimbursed. Land already owned by the applicant municipality, regardless of purpose, is not eligible.
5. **Not take agricultural land out of production:** Executive Order #193 discourages the irreversible

conversion of the Commonwealth's productive agricultural land base. The DWSP grant will not be used to convert agricultural land to other uses when feasible alternatives are available.

In the event that all feasible alternatives have been explored, and the conversion of agricultural lands to non-agricultural use remains the only feasible action to protect the quality and quantity of public drinking water supplies, a mitigation plan (typically involving the creation and/or permanent protection of agricultural land in an area less-sensitive area, or payment into a Department of Agricultural Resources (DAR) fund for farm conservation) must be developed to be eligible for reimbursement under a state grant. Any project that would convert agricultural lands should consult with DAR at (617) 626-1700 prior to submitting an application.

6. **Have certified clear and marketable title.** Applicants selected to receive an award through this program must ensure the property they acquire has good, clear, marketable title. Title research should be conducted well in advance of anticipated closing, to allow for resolution of any issues that may arise. Where clear title is unavailable, the Applicant may acquire the property by a friendly taking (eminent domain) process to clear the title. At the sole discretion of EEA, title insurance may be accepted where title research reveals unresolvable flaws in title.

Additional notes on eligible projects:

- Multiple applications will be accepted from the same entity. Landholdings that are in a single, contiguous tract may be packaged in the same application. Unrelated, separate landholdings must be submitted as individual applications.
- Municipalities may apply for funds to protect drinking water supply land on behalf of any PWS.
- Municipalities may apply for funds to protect water supply land that is partially or wholly located within another municipality.

Allowable uses of property acquired with DWSP funds:

While the primary purpose of this grant is to protect public drinking water supplies, an additional goal of the program is to encourage multiple compatible uses of protected open space. Property acquired with the help of funds from this program must allow for appropriate passive public use, consistent with 310 CMR 22.00. The unique characteristics of each property will guide what activities are appropriate, but the specific mix of permitted recreational uses will be determined by the grantee, with EEA approval.

Permitted uses: Watershed protection, groundwater recharge, passive recreation, limited agriculture and/or forestry.

Examples of acceptable non-water supply uses: hiking, hunting, skiing, wildlife viewing, educational programs, sustainable timber management under an approved forest management plan, haying.

Prohibited uses: Active recreation, intensive agriculture, or developed uses; uses prohibited in 310 CMR 22.00.

Examples: athletic fields, motorized vehicles, row crops, feedlots, large-acreage clear-cutting, swimming pools, play structures, golf courses, buildings.

Article 97 protection: Any property acquired with EEA grant assistance becomes permanently protected open space, dedicated to water supply protection and land conservation, in accordance with M.G.L. Chapter 40, § 38, 39B, 41 and 15B, and Article 97 of the Amendments to the Massachusetts Constitution. It must be

placed under the control of the Board of Water Commissioners (or Board of Selectmen authorized as such) of the applying municipality or water district. These must be stated in the deed. No major alteration of this property, or changes in the proposed uses, can take place without the prior approval of the Secretary of EEA, approval by both houses of the Massachusetts Legislature, and Governor, and appropriate mitigation.

Previously developed land, greyfields, & brownfields:

Communities may receive DSWP funding to acquire property that requires removal of buildings or impervious surfaces, remediation, or other environmental restoration, and are encouraged to submit applications for such projects. However, properties must be adequately remediated prior to reimbursement. This will require careful planning and timely action on the part of the applicant community to finish by the end of the contract period.

‘Brownfield’ is defined as a property where real or perceived environmental contamination complicates redevelopment or reuse efforts. These properties are typically abandoned or underutilized commercial or industrial sites, though other land uses may also be brownfields. In many cases, these sites have been reported to the Massachusetts Department of Environmental Protection (DEP) because contamination has been found (to find out, go to <http://public.dep.state.ma.us/SearchableSites/Search.asp>). In other cases, sites may not have been assessed due to insufficient resources or fear of liability for possible contaminants.

‘Greyfield’ is a term used to describe lands that are in some state of development that is outdated, underutilized, failing, or vacant. Examples include old parking lots or vacant strip malls.

Developed, previously developed, greyfield, or brownfield sites which the applicant intends to restore are eligible for acquisition under the DWSP grant program. To be considered, the applicant must:

1. If the site has been reported to DEP under M.G.L. c. 21E, include in the application a copy of the most recent environmental site assessment report (Massachusetts Contingency Plan (MCP) Phase I or Phase II). These reports are available online and/or are on file with the appropriate DEP regional office (locate your regional office here: <http://www.mass.gov/dep/about/regional.htm>). If the site has not been reported to DEP, the most recent ASTM Phase I or II site assessment report may be substituted.
2. Demonstrate their ability to complete any remaining required environmental response actions through the submission of a budget outlining sources of assessment/remediation funding and a timeline for completion. If another liable party (e.g., the current owner or a causally-responsible party) will be completing any required response actions after the property is transferred, include any legal agreements to that effect. If selected to receive funding, the applicant must submit a site-specific environmental cost estimate (or MCP Phase III Completion Report including a cost estimate) from a Massachusetts Licensed Site Professional (see <http://www.mass.gov/dep/cleanup/licensed.htm> for a list of LSPs).
3. Ensure that the site achieves closure under M.G.L. 21E through either a Response Action Outcome (RAO)* or Remedy Operation Status (REMOPS) prior to the end of the fiscal year for which the DWSP grant is awarded. Site closure must precede opening the property to the public. (For text of M.G.L. 21E legislation, see: <http://www.mass.gov/legis/laws/mgl/gl-21e-toc.htm>). Remediation must be appropriate for the intended water supply use as described in the Project Narrative.
4. Submit a copy of all Activity and Use Limitation (AUL) deed clauses with the RAO. AULs can indefinitely exclude certain land uses based on the level of remediation attained at a site or portion of a site. If there are AULs associated with the site, the management plan must demonstrate that it accommodates them without significantly compromising public access.
5. **Remediation MUST be completed to the full satisfaction of EEA before an applicant will receive reimbursement.**

Assessment and remediation costs are not eligible for reimbursement under the DWSP grant program. More information on brownfields, state and federal brownfields grant and loan programs and liability protection is

available from DEP at: <http://www.mass.gov/dep/cleanup/brownfie.htm>.

EEA reserves the right to not reimburse applicants for projects where site remediation is unsatisfactory.

C. APPRAISAL REPORTS:

Applications must include the appropriate type of appraisal with the application, and must be received by the application deadline. Appraisals must be dated no earlier than one year prior to the application due date.

Applications lacking the correct appraisal(s) will not be considered.

See Attachment B for detailed appraisal specifications.

1. Parcels with an estimated value of between \$50,000 - \$750,000:
One full narrative appraisal by a certified or licensed real estate appraiser.
2. Parcels with an estimated value over \$750,000:
Two full narrative appraisals or one full narrative appraisal and one review appraisal by certified or licensed real estate appraisers.
3. Parcels with an estimated total value of \$50,000 or less:
One full narrative appraisal, contracted market analysis, or opinion of value by a certified or licensed real estate appraiser.

NOTE: The Applicant or one of the Applicant's project partners must be the client for the appraisal, market analysis, or opinion of value. The owner of the property cannot be the client, and cannot donate money to cover the cost of the appraisal(s).

D. EVALUATION CRITERIA:

Each application will be scored using the criteria below. See the full application in Attachment A for more detailed description.

- **Project quality – 74 points**
- **Resource management – 18 points**
- **Demographics – 8 points**

A project Selection Committee composed of EEA and DEP staff members will review all applications. After completing preliminary review, site visits, and rating, the Selection Committee will make funding recommendations.

E. FUNDING AVAILABILITY, BUDGETING GUIDELINES & ALLOWABLE EXPENDITURES:

Reimbursement rate:	50% of the total approved project cost
Maximum award amount:	\$350,000

Applicants must submit the appropriate type of appraisal(s) (see Section 2D), an itemized budget including estimated total project cost, and a specific grant request. The maximum award for any single project may be increased at the discretion of the Secretary.

Eligible project costs: Costs eligible for reimbursement include all approved project costs incurred on or after a selected Applicant's contract execution date and on or before June 30, 2014 (June 30, 2015 for FY15 awards).

Project costs eligible for reimbursement include *only*:

Property acquisition	Recording fees
Title research and certification	Survey or plan of land
Baseline Documentation Report & Land Management Plan (up to \$3,000)	

Ineligible project costs: Costs that are ineligible for reimbursement include, but are not limited to:

Staff salaries	21E compliance fees
Legal fees other than title research & certification	Brownfield cleanup costs
Application preparation and submission costs	Equipment or goods
Buildings, pumps, or other infrastructure	Appraisal

All contracts shall be subject to available funding, whether through the appropriation and authorization of sufficient funds or the receipt of sufficient revenues. If available funding ceases for any reason, a contract shall be deemed under suspension and contract performance must halt. A contractor will not be entitled to compensation for any performance provided during the period of contract suspension. EEA may lift the suspension if additional funding is received. In the absence of foreseeable available funding, EEA may terminate the contract.

F. BUDGET REQUIREMENT:

Applicants selected to receive grant funding must show the use of funds from non-state sources, such as PWS funds, other grants from private or non-profit foundations, and cash contributions from local partners or individuals. As the DWSP program is a reimbursement grant program, EEA can only reimburse on the total amount spent, *as shown by cancelled checks, transfer statements, and Treasurer's statement from the Grantee*. Only expenditures from the Grantee's account will be reimbursed. Funds from other state grant programs may not be paired with this grant. Community Preservation Act (CPA) payments and federal funds including those administered by state agencies, may be used, with the exception of the Land and Water Conservation Fund. Only those eligible project expenses incurred within the contract period will be considered for reimbursement.

G. PROJECT TERMS:

Grantees must abide by the Standard Commonwealth of Massachusetts Terms and Conditions and the EEA Supplemental Terms and Conditions. All contracts are subject to successful negotiation of a Final Scope of Services. EEA does not guarantee that any contracts may result from this RFR, or that any particular funding level will be awarded. It is anticipated that projects selected to receive awards for FY14 could commence immediately upon EEA's announcement; projects selected to receive awards for FY15 could begin no earlier than July 1, 2014. The awarded contracts will be reviewed during their course and, upon request by the Contractor, may be extended or otherwise amended at the sole discretion of EEA. Property purchased prior to contract execution or after contract execution will not be reimbursed. Property purchased without certified clear and marketable title will not be reimbursed.

H. ANTICIPATED DURATION OF CONTRACTS:

Contracts for FY 14 will be effect from the date of execution until June 30, 2014. Contracts for FY15 projects will be in effect from the date of execution or July 1, 2014, whichever is later, until June 30, 2015. Extension of a contract is at the sole discretion of EEA.

I. DELIVERABLES, OWNERSHIP, AND CREDIT DUE:

Real property acquisitions resulting from this RFR must be held by the municipal water department or public water supplier, or selectboard acting as such. A property survey (unless a recent survey has already been completed) and a Baseline Documentation Report and Land Management Plan must be completed for the property prior to reimbursement. Property acquired using DWSP grant funds is permanently protected open space land under Article 97. Conversion to another use or transfer to another ownership is prohibited. Properties must be open to the public for appropriate passive recreation. Properties must be maintained in a natural vegetated state to the greatest extent possible.

J. REPORTING:

No interim reports are required, however, grantees are subject to contract performance review by the EEA grant administrator without advance notice.

K. INVOICING:

The DWSP program is a **reimbursement** program. Applicants selected to receive grant funding will be required to submit a State Standard Contract, billing forms, and documentation of expenditure. These forms will be sent to Grantees with their contract. Land must not be purchased until after the Applicant has an executed contract from EEA. Only approved expenses incurred during the period of contract are eligible for reimbursement. **See also EEA Supplemental Terms and Conditions.**

3. Instructions for Application Submission

A. APPLICATION SUBMISSION:

Applications must be received in hard copy by **5:00pm, Tuesday, July 31 , 2013**. Any application received after the deadline will be rejected. A postmark will not be accepted for verification of date of submission. Applications will not be accepted by fax or email. The outside of the package should be marked RFR ENV 14 DCS 04. Submit one **original** (clearly identified as such) and **three paper copies** of the application to:

Celia Riechel, Grant Administrator
RE: ENV 14 DCS 04
Executive Office of Energy and Environmental Affairs
100 Cambridge Street – Suite 900
Boston, MA 02114

Help reduce waste—print double sided when possible. Use the minimum packaging necessary for good organization.

B. REQUIRED DOCUMENTS:

A complete application package includes a completed Application Form and supporting documentation. *Applications lacking items 2, 3, or 4 below by the application deadline will be disqualified.*

Applications should include:

1. Cover letter signed by an authorized signatory for the applicant organization (eg, Chair of the Selectmen, Mayor), authorizing the project manager to apply for the grant on behalf of the municipality or PWS
2. Application form
3. Project narrative
4. Budget, itemized as anticipated
5. Maps illustrating project resources and values (you may use the Water Supply Protection Areas online map located here: <http://maps.massgis.state.ma.us/images/dep/omv/wspviewer.htm>)
6. Documentation of the location of the project parcels in water supply protection area:
 - Projects to protect existing water supplies: DEP-approved drinking water supply protection area
 - Projects to protect planned future wells/intakes: Parcel is located in the estimated supply area, as identified through an appropriate planning process (refer to section 2B). Include copies of the relevant parts of the plan
 - Projects to acquire land for planned groundwater recharge sites: Parcel is located in an area identified as suitable for groundwater recharge, and has been designated as a potential recharge site through an appropriate planning process. Include copies of the relevant parts of the plan.
 - Parcel soil type is appropriate for infiltration
 - Estimated travel time to nearest public drinking water supply well
7. Appraisal report(s) *(only one copy required; application copies may include just the appraisal summary letter)*
8. Conservation Restriction draft *(if applicable)*
9. Most recent brownfield site assessment MCP Phase I or II, or ASTM Phase I or II *(if applicable)*
10. Preliminary brownfield remediation plan and timeline *(if applicable)*

See the Application Form for more detail.

C. DOCUMENTATION REQUIRED IF SELECTED TO RECEIVE FUNDING:

If selected, the Applicant will be required to submit the following forms to receive an executed contract:

- Commonwealth Standard Contract Form
- Commonwealth Standard Terms and Conditions
- Commonwealth Scope and Budget Form
- Completed Contractor Authorized Signatory Listing
- Request for Taxpayer Identification Number and Certification (W-9) (if applicable)

Respondents should review the Commonwealth Standard Contract Form, Commonwealth Scope and Budget Form, and Contractor Authorized Signatory Listing prior to submission of a Response, available under the Forms and Terms tab of this Comm-PASS posting, as well as

http://www.mass.gov/?pageID=osdmodulechunk&L=1&L0=Home&sid=Aosd&b=terminalcontent&f=osd_forms&csid=Aosd.

D. APPLICATION STEPS AND PROCEDURES:

1. **Municipal or PWS Board vote.**
2. **Submit application.**
3. Applicant will be contacted by EEA to schedule a **site inspection**.
4. **Application evaluation:** See Attachment B for rating system.
5. **Awards announced:** Project approval letter, unexecuted Commonwealth Standard Contract Form, and billing forms for approved projects are sent to Participants by EEA. State funds are obligated by the Commonwealth upon execution of contract documents for approved projects. Applicants not selected to receive funding will receive a brief explanation of why the project was rejected.
6. **Conservation Restriction review:** projects that involve a CR or WPR must have a draft CR reviewed by EEA-Division of Conservation Services (DCS). Draft CRs/WPRs, along with a CR review application form (available on the DCS website: www.mass.gov/eea/dcs), should be sent separately to:
Nicole Sicard
Division of Conservation Services
Executive Office of Energy & Environmental Affairs
100 Cambridge St., Suite 900
Boston, MA 02114
7. **Contract execution:** Commonwealth Standard Contract Form is signed by Grantee and returned to EEA. Grantee will be contacted once contract is executed.
8. **Survey the property.**
9. **Conduct title research.** All properties must have certified clear and marketable title.
10. **Secure DEP approval of acquisition.**
11. **Follow state procurement law:** Acquisition projects must adhere to the state's procurement laws, M.G.L. c. 30B (Uniform Procurement Act). DWSP projects fall under Section 16(2)(e). Work with your municipal procurement officer to ensure that your project conforms to the law, including advertising in the Central Register 30 days prior to closing. Communities using CPA funds for the acquisition are exempt from this requirement.
12. **Purchase property.**
13. **Prepare the property:** Grantee completes contract conditions and performs preliminary site cleanup as needed.
14. **Submit Baseline Documentation Report and Land Management Plan:** Grantee must prepare a Baseline Documentation Report and Land Management Plan that documents the conditions of the property at the time of funding (but after any clean-up or remediation) and describes allowable use and management plans. A template document will be provided to Grantees. EEA must review and approve the report.
15. **Request reimbursement:** Grantee submits reimbursement billing form to EEA.
16. **Reimbursement payment.**

4. Deadlines and Procurement Calendar

A. RELEASE OF RFR: April 16, 2013

B. INFORMATION SESSIONS:

EEA will conduct three information sessions for interested applicants. These will be for general information purposes and will not permit detailed discussion of any one application or potential parcel. The sessions are scheduled for:

Date	Time	Location
Monday, May 6	10:00 am	Quinsigamon/Regatta Point State Park 10 North Lake Ave. Worcester, MA 01612
Monday, May 6	2:00 pm	Pioneer Valley Planning Commission 60 Congress St, Room 1A Springfield, MA 01104
Friday, May 3	2:00pm	Cape Cod Commission Innovation Room 3225 Main St. (rear building) Barnstable, MA 02630

While not required, it is strongly recommended that applicants attend. Please RSVP at 617-626-1187 or celia.riechel@state.ma.us.

C. QUESTIONS:

If unable to attend an information session, questions may be submitted in writing to Celia Riechel, Grant Administrator, on or before xx September (see contact information above). Responses to questions submitted, as well as those raised during the information sessions may be posted on Comm-Pass.

D. APPLICATION DUE DATE: 5:00pm, Tuesday, July 31 , 2013

E. ESTIMATED AWARD DATE:

Awards for land acquisitions are estimated to be announced on or about 100 days after the grant application deadline.

F. ESTIMATED CONTRACT START DATE:

Notwithstanding any verbal representations by the parties, or an earlier start date listed on the EEA executed contract, and only after an award is issued and a final scope of services has been negotiated, the effective start date shall be the latest of the following dates: the date the of the contract executed by an authorized signatory of the contractor and the procuring department; the date of secretariat or other approval(s) required by law or regulation; or a later date specified in the EEA executed contract. The estimated start date for contracts resulting from this RFR is January 5, 2014 for FY14 awards and July 1, 2014 for FY15 awards.

Miscellaneous

A. TYPE OF PROCUREMENT: Grant

B. USE OF THIS PROCUREMENT BY SINGLE OR MULTIPLE DEPARTMENTS: This RFR is a single department procurement. All contracts awarded under this RFR will be utilized solely by EEA.

C. REQUEST FOR SINGLE OR MULTIPLE CONTRACTORS: This RFR may result in multiple contracts.

D. RFR DISTRIBUTION METHOD: This RFR has been distributed electronically using the Comm-PASS system. It is the responsibility of every Applicant to check Comm-PASS for any addenda or modifications to

an RFR to which they intend to respond. The Commonwealth of Massachusetts and its subdivisions accept no liability and will provide no accommodations to Applicants who fail to check for amended RFRs and submit inadequate or incorrect responses. Potential Respondents are advised to check the “last change” field on the summary page of RFRs for which they intend to submit a response to ensure they have the most recent RFR files.

Respondents may not alter RFR language or any RFR component files. Those submitting a proposal must respond in accordance to the RFR directions and complete only those sections that prompt a Respondent for a response. Modifications to the body of this RFR, specifications, terms and conditions, or which change the intent of this RFR are prohibited. Any unauthorized alterations will disqualify response.

E. LIST OF ATTACHMENTS TO THIS RFR:

- A. Application Form
- B. DWSP program acquisition selection and rating system
- C. Appraisal report requirements
- D. Requirements for use of Community Preservation Act funds

The EEA Supplemental Terms and Conditions are hereby incorporated into this RFR by reference. EEA Supplemental Terms and Conditions are found under the Forms & Terms tab of this Comm-PASS posting

Massachusetts Executive Office of Energy and Environmental Affairs
Drinking Water Supply Protection (DWSP) Grant Program
APPLICATION FORM – FY2014

Deadline: Tuesday, July 31, 2013, 5:00pm

Please print double-sided

I. APPLICANT INFORMATION

Applicant: _____

Project name: _____

Public Water System (PWS) ID#: _____

Municipalities served by the PWS: _____

Population served by the PWS: _____

Does this PWS serve an identified Environmental Justice community?

☐ Yes

☐ No

Does the PWS currently have any enforcement orders or orders of non-compliance issued for water resource management?

☐ Yes

☐ No

Note: Applicants with outstanding or unresolved orders will not receive funding.

Contact person / project manager:

This is the person who will be the day-to-day manager of the project and who will represent the Applicant in communication with EEA.

Name: _____

Title/affiliation: _____

Address: _____

Phone Number: _____

E-mail address: _____

2. PROJECT DETAILS

Project type: What is the purpose of your proposed acquisition (select one)?

☐ Protect land feeding an existing well/intake

If yes, what is the Water Supply Source ID# (list all sources to be protected by this acquisition, eg, 01G, 02G):

- ☐ Protect land that will serve a planned future well or intake
☐ Groundwater recharge

Parcel information:

Parcel	Acres	Assessor's map/lot #	Interest to be acquired (fee or Conservation Restriction)	Parcel location (street, town)	Current owner
1					
2					
3					
4					
5					
6					

Total project acres: _____

Watershed: _____

Current zoning:

Check all that apply.

Attach zoning map(s).

- ☐ Industrial/manufacturing
☐ Commercial/institutional/mixed use
☐ Residential
☐ Agricultural/residential
☐ Forest / Water supply protection district

Present use(s): _____

Past use(s): _____

Proposed use(s) (must permit public access for passive recreation, except in Zone I and around sensitive areas): _____

Are there buildings or structures on the property?

☐ Yes

☐ No

If yes, list each. The DWSP Program is intended to preserve undeveloped land, not to purchase buildings. Buildings must be removed, unless the Applicant sufficiently demonstrates the need to retain them to serve legitimate water supply purposes.

Will this project involve the removal of structures, impervious surfaces, or other development, or is it a former brownfield? or rehabilitation of a greyfield, brownfield, or developed site?

☐ Yes

☐ No

Proposed remediation plans must be appropriate. If a brownfield, attach a copy of the most recent site assessment, either MCP Phase I or II, or ASTM Phase I or II, indicating the nature of the contamination and the remediation required. Discuss in the Project Description the importance of remediating the site, the plan for remediation, clear identification of disbursement of liability (e.g., will the town take it or will it reside with the current owner?), and any specific stewardship that will be undertaken to ensure that currently existing contamination on the site does not in the future pose undue risk to the public. Include a remediation timeline and funding sources. Site remediation must be completed before reimbursement.

3. ACQUISITION AND FUNDING DETAILS

Appraisal Report #1		Appraisal Report #2 (if land valued at over \$750,000)	
Valuation	\$	Valuation	\$
Appraiser		Appraiser	
Valuation		Valuation	
Date		Date	

Buildings are not eligible for funding; their value may not be included in the value of the subject property.

Acquisition details:

Negotiated Sale: ☐ Yes ☐ No
Do you have a Purchase & Sales Agreement or Agreed Price? ☐ Yes ☐ No
If yes, amount: \$ _____

Is Clear Title available? ☐ Yes ☐ No
If no, is an eminent domain taking anticipated? ☐ Yes ☐ No
If yes, proposed pro tanto award amount: \$ _____

If clear title is not available, the applicant may decide to acquire the property by a friendly taking (eminent domain) process to clear the title. It is best to know if there is a potential title problem as soon as possible since this can complicate the acquisition process.

Can this project be completed in Fiscal Year 2015 (July 1, 2014 – June 30, 2015)?

☐ Yes ☐ No

Funding request:

Recipients of DWSP grant funding are reimbursed *after* they have expended the total project cost and submitted proof of payment. See section 2E in RFR for eligible expenditures. The total project cost must be raised or appropriated by the applicant. Costs incurred prior to grant approval and contract execution will not be reimbursed. The maximum grant award is \$350,000. The reimbursement rate is 50% of eligible expenditures.

Total project cost (estimated): \$ _____

Requested award amount: \$ _____
Up to 50% of eligible total project cost, not to exceed \$350,000

Project budget: 1 page itemized list

Include the source of all local funding including other grants, donations, partner organizations, etc. Donations should be gifted to the Applicant and earmarked for the project. If a greyfield, brownfield, or formerly developed site, include preliminary budget details and permits for site remediation/restoration.

4. PROJECT DESCRIPTION

Describe in a 1-2 page attachment the following:

- Description of property and its value for water supply
- Water conservation, resource planning, and management measures already in place – how does this project fit?
- Threat of development to parcel
- Proposed uses and type of passive public recreation to be permitted
- Property management plans and vegetative cover types
- Project schedule

5. RESOURCE MANAGEMENT

Supporting documentation **MUST** be included to receive credit.

What is your service area's current rate of water use?

_____ residential gallons per capita per day

What is your service area's current percentage of unaccounted-for water?

_____ %

6. PROJECT QUALITY

Supporting documentation **MUST** be included to receive credit.

Water resource planning:

Is project located in an area identified as a priority for protection in one of the following plans?

Municipal/PWS Source Water Assessment and Protection (SWAP) report, wellhead protection plan, surface water supply protection plan, community master plan, water resources management plan, wastewater resource management plan, regional watershed plan, water assets report, or an analysis of lands utilizing established water assets GIS screening methodology
(See http://www.mass.gov/mgis/water_assets_budgets.htm).

☐ Yes

☐ No

Resource protection: complete only the section that corresponds to your proposed project type.

A. Current well sites/intakes:

Acres of project located within Zone I/II or A/B drinking water supply area, or Interim Wellhead Protection Area:

_____ acres

Distance from property to wellhead or intake: _____ feet

B. Future well sites/intakes:

Have you submitted an application for a New Source Review to DEP?

☐ Yes

☐ No

How much of your project lies within proposed Zone I/II or A/B drinking water supply area:

_____ acres

How much lies within the estimated Zone C or III? _____ acres

C. Groundwater recharge projects:

Portion of property in each hydrologic soil group (HSG):

A (gravel, sand): _____ acres
B (loamy sand, sandy loam): _____ acres
C (loam, silt loam, sandy clay loam, clay loam, silty clay loam): _____ acres
D (clay): _____ acres

Soil classification information is available from the USDA Natural Resources Conservation Service (NRCS), web soil survey (<http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>). Applications to acquire properties for which NRCS data is lacking or believed to be inaccurate may conduct an independent analysis of the soil composition and conductivity specific to the property.

Infiltration rate: _____ inches per hour

Test type: ☐ infiltration ☐ percolation

Estimated travel time to nearest public drinking water supply well: _____ year(s)

Note: Recharge projects with predominantly C or D soils HSG, an infiltration rate exceeding 30 minutes/inch (2 inches/hour), or that have an estimated travel time of less than one year to the nearest public drinking water supply well are NOT eligible for funding as a recharge project.

Recreation:

What kind of public low-impact passive recreational activities will be permitted on the property?

☐ Trail-based activities (example: hiking)
☐ Wilderness activities (example: hunting)
☐ Other (describe): _____

Public access for passive recreation is a requirement of this grant. Necessary and reasonable restrictions to public access may be made in Zone I and infrastructure areas.

7. MUNICIPAL OR PWS BOARD OF COMMISSIONERS APPROVAL

Does this acquisition have town meeting/city council/PWS board approval?

☐ Yes ☐ No

If not, what is the date for the vote? _____

The proposed land acquisition must have approval. Attach a certified copy of the vote, or draft language.

8. OTHER DOCUMENTATION

- Maps:**
1. **USGS topographic map** with an outline of the Project boundary. Identify nearby water supply lands and other public or quasi-public open space abutting, or in close proximity
 2. **Drinking Water Supply Protection Areas map** indicating Project location in relation to Zones I, II or A, B. An online mapping tool is available here:
<http://maps.massgis.state.ma.us/images/dep/omv/wspviewer.htm>
 3. **Watershed map** showing this parcel in relation to the rest of the watershed.
 4. **Plot plan or survey map** showing the Project boundary. The Project area must be shown in enough detail to be legally sufficient to identify the lands to be protected. A survey plan with deed references or assessor's map with block and lot number are acceptable.
 5. **Hydrogeologic Soil Group (HSG) map** (if applicable)
 6. **Draft Conservation Restriction (CR):** If your project involves the purchase or conveyance of a CR, please complete a separate CR application and submit a draft restriction along with this application. The CR application and a model document is available under "Publications" at the DCS website at www.mass.gov/eea/dcs. Submit the draft CR to:

Nicole Sicard
Executive Office of Energy and Environmental Affairs
100 Cambridge St., Suite 900
Boston, MA 02114

7. **Infiltration rate testing** summary results (if applicable).
8. **Brownfields:** If the property to be acquired is a brownfield site, the applicant should submit documentation of the nature of contamination, the type of remediation required, and an estimate of the cost and time required for remediation. This should include a map of contaminant locations. Massachusetts Department of Environmental Protection maintains a database of known, current, waste sites and pollutant releases at <http://public.dep.state.ma.us/SearchableSites/Search.asp>. A more detailed, site-specific environmental cost estimate (or MCP Phase III Completion Report including a cost estimate) from a Massachusetts Licensed Site Professional will be required if a project is selected to receive funding (see <http://public.dep.state.ma.us/LSP/lspsearch.htm> for a list of LSPs). Applicants must prove that the site has achieved closure under M.G.L. 21e by submitting either a Response Action Outcome (RAO) or Remedy Operation Status (REMOPS) prior to the end of the fiscal year of the award, before reimbursement will be made. If an Activity Use Limitation (AUL) deed clause is part of the RAO, a copy must also be submitted and approved before reimbursement.

9. CERTIFICATION

This application was prepared by:

Name:

Title/organization:

Mailing address:

City:

State:

Zip:

Email:

Telephone:

The information and data that has been included in this application to the Drinking Water Supply Protection Grant application is true and correct to the best of my knowledge.

Signed:

Date:

ATTACHMENT CHECKLIST

- ☐ Authorization from CEO identifying project manager
- ☐ Budget
- ☐ Maps
- ☐ Project description narrative
- ☐ Supporting documentation (infiltration rate; brownfields, etc.)
- ☐ Appraisal report(s). *Applications lacking the correct number and type of appraisal report(s) will not be considered.*
- ☐ Town meeting, city council, or PWS board authorization to apply to this grant and acquire the subject parcel(s) for water supply purposes (see Section 2A of the RFR for details)
- ☐ Draft Conservation Restriction (if applicable)

Contract documents

Applicants selected to receive funding under this RFR will be required to submit the following forms in order to execute a contract with the Commonwealth. Forms will be provided. They are also available from the Operational Services Division at <http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/osd/osd-forms.html>.

- Commonwealth Standard Contract
- Commonwealth Standard Terms and Conditions
- Scope of Services and Additional Terms and Conditions
- Contractor Authorized Signature Verification Form
- Request for Taxpayer Identification Number and Certification (W-9) (if applicable)

Attachment B: Land Acquisition Project Selection System

Drinking Water Supply Protection Grant Program

In order to distribute limited grant funds, a project selection system is used for land acquisition projects. The selection system includes a review of each project and draft ratings and funding recommendations by a grant review committee. The rating system considers demographic, community management and planning, and project quality factors in order to identify those projects that best protect public drinking water supplies.

In reviewing applications for land acquisition and developing funding recommendations, the grant review committee considers:

1. Demographics

- Population served
- Environmental Justice Community

2. Resource Management

- PWS rate of water use: residential gallons per capita per day
- PWS percentage of unaccounted-for water
- PWS water rate structure

3. Project Quality

- Identification of property as priority for acquisition in appropriate plan
- Importance of parcel(s) proposed for acquisition to the water resource. Separate criteria for each of three project types:
 - A. Land to protect current wells/intakes:
 - 1. Portion of land within Zone I/II or A/B
 - 2. Distance of parcel from wellhead or intake
 - B. Land to protect proposed future wells/intakes:
 - 1. Portion of land within estimated Zone I/II or A/ B or Interim Wellhead Protection Area
 - 2. New source approval submission to DEP
 - C. Lands to provide groundwater recharge areas:
 - 1. Estimated travel time for recharged water to nearest public drinking water supply well
 - 2. Infiltration rate
- Current zoning of project parcels
- Location over aquifer
- Removal of structures, development, or brownfield remediation
- Project size
- Public recreational opportunities
- Overall quality

SELECTION NOTES:

Preservation of Agricultural Land

Executive Order #193 discourages the irreversible conversion of the Commonwealth's productive agricultural land base. State Grants shall not be used to encourage the irreversible conversion of agricultural land to other uses when feasible alternatives are available. In the event that all feasible alternatives have been explored, and the conversion of suitable agricultural lands to non-agricultural use remains the only feasible alternative to protection of open space, a mitigation plan must be developed to be eligible for reimbursement under a state grant. Project which would convert any prime agricultural lands should consult with the Department Agricultural Resources at (617) 626-1700 prior to submitting an application.

RATING SYSTEM for Drinking Water Supply Protection Grant Acquisition Projects

CATEGORY		Description										Max
DEMOGRAPHICS – 8 points												
Population served		How many people does this PWS serve? Score will be ranked relative to other applications. 0 - 6										6
Environmental Justice		PWS serves, or will serve, identified EJ community Yes : 2 No: 0										2
RESOURCE MANAGEMENT – 18 points												
Management		Rate of water use: Residential gallons per capita per day: ≤55 56-65 66-70 71+ 7 6 1 0										7
		Percentage of unaccounted for water: ≤5% 6-10% 11-15% 16%+ 7 6 1 0										7
		Water rate structure: Tiered or ascending Seasonal Flat rate Flat fee 4 2 0 0										4
PROJECT QUALITY 74 points												
Importance (rate only on criteria for relevant type of project)	A. Current wellhead /intake projects	Percentage of project within a Zone I,II, A, or B water supply protection area: 1-49% 50-74% 75-89% ≥90% 2 6 8 12										24
		Distance to wellhead or intake: <500ft. 500-999ft. 1,000-1,999ft 2,000-3,999ft ≥4,000ft 8 6 3 1 0										
	B. Proposed future wellhead / intake projects	Percentage of project within estimated Zone I/II or A/B water supply protection area, or Interim Wellhead Protection Area: 1-49% 50-74% 75-89% ≥90% 1 12 16 18										
		Has an application for new source approval been submitted to DEP for the proposed wellhead/intake? Yes: 6 No: 0										
	C. Groundwater recharge projects	Estimated travel time for recharged water to nearest public drinking water supply well: <1 year 1-2 yrs 3-4 yrs 5-6 yrs ≥7 yrs Ineligible 0 4 10 12										
		Infiltration rate (average for site): <1.4 in/hr 1.4 – 2.9in/hr 3 – 5.6 in/hr >5.6 in/hr 0 4 10 12										
Resource protection		Project located in an area identified as a priority for protection in an appropriate plan: Yes: 10 No: 0										20
		Current zoning of project parcel(s): Industrial/Manufacturing..... 5 Commercial/Institutional/Mixed use..... 4 Residential..... 3 Agriculture/residential.....2 Forest / water supply protection.....0										
		Percentage of property located over a medium- or high-yield aquifer, or sole-source aquifer: <5% 5-10% 11-25% 26-50% >50% 0 1 2 3 5										
		Undevelopment: Project will remove structures, impervious surfaces, other development. Proposed remediation plans must be appropriate. Yes: 3 No: 0										
Landscape conservation		Project size (acres): < 10 10-24 25-49 50-74 75-99 100-149 150+ 1 2 4 6 8 10 12										12
Recreation		Public recreational opportunities? (determined at site visit) Trails-based (eg, hiking):										

Attachment C: Appraisal Report Requirements

If your project involves an acquisition, Appraisal Reports are absolutely critical to the success of your project. The subject property must be appraised in accordance with the Division's requirements by a qualified, independent and disinterested appraiser. Reports done for the owner, or paid for by the owner, cannot be used. The Report(s) must be submitted along with the preliminary application by the grant round application deadline.

- I. **Type of Appraisal Report Required:** The following conditions determine the number and type of appraisals required.
 - a. for acquisitions with appraised values of \$750,000 or more, two appraisals by real estate appraisers certified or licensed pursuant to M.G.L. c. 112, and dated no earlier than a year prior to the date of execution of the acquisition agreement or conveyancing documents, are required, of which one may be a review appraisal;
 - b. for acquisitions with appraised values of less than \$750,000 but more than \$50,000, one appraisal by a real estate appraiser certified or licensed pursuant to M.G.L. c. 112, and dated no earlier than a year prior to the date of execution of the acquisition agreement or conveyancing documents, is required; and
 - c. for acquisitions of \$50,000 or less, one appraisal by a real estate appraiser certified or licensed pursuant to M.G.L. c. 112, and dated no earlier than a year prior to the date of execution of the acquisition agreement or conveyancing documents, or one contracted market analysis, or one contracted opinion of value is required, subject to the discretion of the Director of the Division of Conservation Services.

A full narrative appraisal is a comprehensive analysis, substantiated by documented market data, of the value of a property. Full appraisals must be bound, in book-fashion, in the left margin, in a durable cover with an identification of the property on the cover page. The paper must be a good grade bond of size 8 1/2"x 11". All pages must be numbered consecutively, including all exhibits, and each important heading must be shown in the Table of Contents. In short, this is not the brief estimate typically done by a lending institution when a home is refinanced.

2. **The Appraiser's Scope of Practice:** The appraiser must be licensed and/or certified by the Massachusetts Board of Registration of Real Estate Appraisers, and have the appropriate license or certification for the type of land that is appraised. Often the project will require a state certified general real estate appraiser. The following is an excerpt from the state regulations for the Board of Registration of Real Estate Appraisers.

264 CMR 6.01: Scopes of Practice

(1) State-Licensed Real Estate Appraisers. State-licensed real estate appraisers may appraise:

- a. non-complex one-to-four unit residential properties having a transaction value of less than one million dollars (\$1,000,000) and complex one-to-four unit residential properties having a transaction value of less than two-hundred fifty thousand dollars (\$250,000);
- b. vacant or unimproved land that is to be utilized for one-to-four unit residential properties, and where the highest and best use is for one-to-four unit residential purposes; and,
- c. properties as specified by the FFIRAS.

State-licensed real estate appraisers may not appraise subdivisions wherein a development analysis/appraisal is necessary and utilized.

(2) State-Certified Residential Real Estate Appraisers. State-certified residential real estate appraisers may appraise:

- a. residential properties with one-to-four units and complex one-to-four unit residential property both without regard to transaction value;
- b. vacant or unimproved land that is to be utilized for one-to-four unit residential use and where the highest and best use is for one-to-four family unit residential purposes; and,
- c. properties as specified by the FFIRAS.

State-certified residential real estate appraisers may not appraise subdivisions wherein a development analysis/appraisal is necessary and utilized.

(3) State-Certified General Real Estate Appraisers. State-certified general real estate appraisers may appraise all types of non-complex and complex real property both residential and non residential.

Regulatory Authority: 264 CMR 6.00: M.G.L. c. 13, s. 92; M.G.L. c. 112, §. 173-195.

3. **Common Comparable Sales Problems:** Reports usually contain comparable sales and the examples offered should be just that: comparable. The locations should be similar, preferably the same town. If they are not, the narrative must explain why that particular sale is still comparable. The highest and best use and market situations of the comparable sale should be the same as the subject property. These sales must also represent arms length transactions – generally municipal transactions are not arms length.
4. **Common Valuation Problems:** The highest and best use must reflect a market situation, and typically "open space" or "conservation" is not a marketable situation. If the subject property cannot support development, perhaps it would be attractive to abutters who wish to add to their own holding (assembly), or the property may have some timber value, or if the property is part of a larger parcel, a before and after value is warranted. Any restrictions placed in the deed by the grantor (seller) can possibly lower the value of the property.
5. **Complicated Circumstances:** Appraisals must be analytical narrative reports following current professional appraisal standards. All components of the report such as introductory and supporting data, valuation analysis, limiting conditions, and certifications must meet these standards. If necessary, the Division of Conservation Services will furnish supplementary specifications which delineate additional required data in the appraisal of highly specialized properties or properties to be acquired under unusual circumstances.
6. **Eminent Domain Taking:** The Municipality must notify the Appraiser if an eminent domain taking is contemplated or a possibility. All grant program participants must provide for fair and equitable treatment of persons and businesses to be displaced as a result of the acquisition. Participants must abide by the requirements of M.G.L. c. 79A or c. 80A (both pertain to eminent domain takings), as amended.
7. **Review Appraisal:** When, in the opinion of the Director, the value of the property remains in doubt, further appraisals may be required to reach a value conclusion. The resolution of value may be accomplished through the performance of entirely new appraisals or through the engagement of an appraiser as qualified above for the purpose of reviewing existing appraisal reports and certifying a final value conclusion.
8. **Reports must be submitted by the grant round deadline.** However, if DCS requires report corrections, revisions, or review appraisals; they may be submitted after the deadline.
9. **Reports must be written for the applicant municipality.** Appraisals must include the municipality as a client, and cannot be paid for, or obtained by, the owner.
10. **Special Note for appraisals submitted as part of a conversion proposal.** These Reports must value the converted property under a hypothetical situation: *as if the property were developable*, unencumbered by any conservation or recreation restrictions.

Sources And References

These appraisal specifications are based on material from the following sources:

1. EEA Land Acquisition Policy – Appraisals dated September 1, 1995.
2. Uniform Standards of Professional Appraisal Practice

APPRAISAL REPORT REQUIREMENTS

I. INTRODUCTION

- A. Title Page: Each Appraisal Report must include: (a) the name of the Municipality (client) for which the Report was prepared, (b) the name and street address of the property, (c) land area of the property (d) the name and street address of the owner(s), (e) the name of the individual making the report, and (f) the effective date of the appraisal.
- B. Table of Contents – List all essential items in the report.
- C. Certificate of Value – See Exhibit I.
- D. Summary of Important Facts and Conclusions
- E. Photographs
- F. Statement of Limiting Conditions and Assumptions: Each Appraisal report should set forth the limiting conditions and assumptions made by the Appraiser in preparing the report. If there is a discrepancy in description, acreage, frontage, or other factual data, the Report should note which description, amount or measurement is being used in calculating the final value.

II. FACTUAL DATA

- A. Purpose of Appraisal: Include a statement of the reasons for the appraisal, a definition of the appraisal problem and a description of the property rights being appraised.
- B. Legal Description and Title
- C. Area, City and Neighborhood Data: Include the area, city and neighborhood data, including area or location maps (such as the United State Geologic Survey topographic map) and indicate the location of the subject property. Include a general description of the city or town, the section of the community, and the actual area surrounding the property. This section should also include a discussion of the town's or city's attitude toward development, and upon what information any conclusions are based; whether the town or city has a Master Plan; the population trends in the community, and reasons for such trends. This data should be kept to a minimum and related to the valuation problem at hand.
 - 1. Favorable and Unfavorable Factors: List and discuss favorable and unfavorable factors affecting the property, such as transportation, major industries, shopping centers and recreation areas. Any hazards or nuisances which affect the subject property, such as obnoxious facilities, smoke, smell, noise and traffic, should be thoroughly discussed. Indicate the factor's location and relationship to the property as well as its effect upon market value.
 - 2. Real Estate Market Conditions: Discussion of current real estate market conditions affecting the area, including supply and demand factors. Mention the specific type of property being appraised, along with future indicated trends and the extent to which those trends affect the value of the property. Also include data on the number of lot sales, and, if available, bona fide building permits issued in the past three to five years, and those pending, for the type of development or construction starts within that three to five year period.

III. PROPERTY DATA:

The data collected by the Appraiser should be as comprehensive as possible, and be acknowledged and related to the Appraiser's determination of Highest and Best Use and final value conclusions.

- A. Site - describe the property's location; current use(s); access (public or private road, paved or unpaved); adequacy of access for subdivision purposes; area; shape; extent of road frontage; buildings; presence and location or absence of utilities; topography; soils and sub-soil conditions; porosity of soils/adequacy of drainage; availability of town sewer (if none, whether soil will percolate); presence or availability of potable water, and whether current or proposed uses may cause contamination of sources of drinking water or wells on or near the property; merchantable forests; extent of water frontage; scenic views; wetlands or floodplain, aquifer recharge districts, or any other environmental constraints. Any history of the site, or physical characteristics, which might indicate its use for disposal or storage of known hazardous or potentially hazardous materials must be indicated. In the case of a partial acquisition, the report should similarly describe the remainder property, including any limitations or enhancement caused by the acquisition of the subject property. Describe any Massachusetts General Laws Chapter 61 (forest land), Chapter 61A (agricultural and horticultural land) and 61B (recreational land) encumbrances which have been placed on the property. Include the existence and extent of any easements, rights of way and/or other encumbrances (including conservation, agricultural, or other preservation restrictions or easements) which appear of record and/or on the ground. Investigate the likelihood of existence or non-existence of loam, peat moss, water,

timber, gravel or mineral deposits on the subject property. If it is determined that such materials exist, determine whether there is a demand or market for the material(s). If so, indicate whether a permit to extract or remove these materials has been issued, or the likelihood of issuance or denial of a permit if applied for. If a permit is not necessary, or has been issued, or issuance would be likely, determine the enhancement value these materials bring to the subject property, if any, by use of the comparable sales method. The presence, absence or value of such materials need not be investigated when the appraisal assignment is for a partial interest in the property which does not include rights to these materials.

- B. Site Conditions and Improvements - Include a description of site conditions and/or improvements by narrative or list form. Such conditions and improvements may include buildings or other structures, foundations, ruins, archeological sites, cemeteries, quarries, dams, and water or flood control devices. If measurable, include dimensions, and cubic or square foot measurements of such conditions and improvements. Where applicable to determination of highest and best use, determine the rentable areas on site (including a statement of the method of measurement used in determining rentable areas), and the fair market rental value of such areas. Also note evidence or likelihood of existence of hazardous materials or waste on the site. Where so noted, the Appraiser must immediately notify the Municipality.
- C. Equipment - Where the highest and best use of the subject property is for a special purpose (for example, as a downhill ski facility, golf course, or camp), include a description of equipment appurtenant to the appraised premises by narrative or list and include all items of equipment. The current physical condition and relative use and/or obsolescence should be stated for each item or group of equipment described, and a final value estimate of each item or group determined. When repair or replacement of the equipment is necessary to bring the equipment to a usable condition, an estimate of the costs for doing so should be provided. Any related personal equipment, such as tenant trade fixtures, which are not attached or considered part of the realty must be separately inventoried by the Municipality. Where applicable, these detachable or individually owned items must be separately valued by the Appraiser.
- D. History - State the history of the use or uses of the property. Include any evidence of prior use of the property for storage, use or disposal of hazardous wastes or materials. Where applicable, describe the purpose for which improvements were designed, dates of original construction and major renovations and/or additions. Show all transfers of the appraised property for the past ten (10) years, including sales; the sale price, if listed; leases; and, if known, offers to buy or sell. If there have been no transfers within the past ten (10) years, the Report should so state, and include a report of the last sale.
- E. Assessed Value and Annual Tax Load - Include the assessor's map and parcel number for the property, a copy of the assessor's map, and the current assessment and dollar amount of real estate taxes. Also include assessments for the five previous years and comment on consistency of assessments, practices and procedures. Assessments for land and structures should be listed separately. If the property is registered under Chapter 61, 61A or 61B, the report must include the full assessment and tax as well as the reduced assessment and tax. If the property is not taxed, estimate the assessment as if the property were subject to taxation, state the rate and give the dollar amount of the tax estimate.
- F. Insurance - If the Appraiser determines value by the income approach then the Appraisal Report should present the estimated rate per thousand and the annual cost of adequate insurance coverage (not necessarily present coverage).
- G. Public Land Use Controls: The Appraiser should make an exhaustive review of laws and regulations that affect the subject property and acknowledge and relate them to the Appraiser's final value conclusions.
 - I. Zoning - Include, as an exhibit or in the addenda, a copy of the applicable sections of the zoning regulations in effect as of the date value is certified, and the date on which the regulations became effective. Describe the zoning for the subject property and for comparable properties; and reveal whether the zoning regulations allow pork chop lots, cluster developments, condominiums, cooperatives or other alternative development approaches. Indicate whether limited development options would enhance value where, for example, higher lot values for buildable land result if non-buildable land is designated as permanent open space, or where a greater net value results from sales of oversized lots utilizing only existing street frontage. If the subject property is not zoned, state what the zoning would be under private ownership. If rezoning is imminent, the background and status of the matter should be described. Also indicate the likelihood of issuance of a variance or approval of a change in zoning where such a variance or change could affect the Highest and Best Use of the subject property. The Appraiser should not unduly speculate; any conclusion that a zoning change may occur or variance would be issued must be clearly supported and explained.

2. Subdivision Rules and Regulations - Where Highest and Best Use of the subject property is deemed to be a subdivision, relevant sections of the current local Subdivision Rules and Regulations must be cited, and copies provided (showing date on which they became effective) including: class of roads, width of rights of way, width of paved surfaces, slope limitations, dead-end road limitations, utilities requirements, sight-stopping distances, intersecting curve radii, and cul-de-sac radii.
3. Wetland Regulations - If the property is potentially subject to the jurisdiction of the United States Rivers and Harbors Act (33 USC Section 404); the Massachusetts Wetland Protection Act (M.G.L. c. 131, §40); the Massachusetts Wetlands Restriction Act (M.G.L. c. 130, §105); or a city or town wetlands by-law, the areas within their jurisdiction and the activities regulated thereby must be discussed, and their impact on the valuation of the subject property determined.
4. Flood Plain Regulations - If the subject property lies in any federal flood hazard district, a flood plain map must be included showing the relationship of the subject property to the district, and the impact on the valuation of the subject property.
5. Water Resource or Aquifer Protection Districts - If the subject lies in a water resource or aquifer protection district, a map must be included showing the relationship of the subject property to the district, together with a description of the regulations and their impact on the value of the subject property.
6. Other Overlay or Floating Zones - The Appraiser should investigate whether other overlay districts or protective zones have been created which may impact the subject property, and determine their effect upon its value.
7. State Sanitary Code (title 5)/Board of Health Regulations If the Appraiser has reason to believe that all or part of the subject property is suitable for development and there is no municipal sewer available to the site, the Appraiser should investigate the local regulations concerning minimum standards for placement and capacity of septic systems, as well as the acceptable percolation rate. If percolation tests are not performed on the site, the Appraiser should submit soil survey maps of the site and identify the types of soils found. If soil maps are not available, or if the Appraiser has concluded the highest and best use of the subject does not include development, a report from a soil scientist is required to indicate (a) the types of soils found on the subject property, (b) whether the site is capable of supporting operational septic systems, and (c) limitations, if any, of the soil types found on the property. If sewer is available to the subject, or if the property may or must connect to sewer, the Appraiser should investigate and report whether new connections to the system are being accepted; whether any regulations or phasing in hook-ups control new connections; whether the town system has sufficient capacity, or sufficient capacity is planned or expected, and within what timeframe.

IV. ANALYSIS AND CONCLUSIONS

- A. Highest and Best Use: The Report must state the Highest and Best Use or combination of uses that can be made of the property (land and improvements) for which there is a current market. The analysis should include a discussion of other logical uses considered and the reasons why the property being appraised lends itself to the selected use. If the Highest and Best Use is different than the present use, the Appraiser should discuss how the property being appraised is available, suitable, adaptable and in demand for the new use. The valuation should be based upon the stated Highest and Best Use. If the Highest and Best Use is based on a zoning change, variance, special permit or subdivision plan approval, the Appraiser should have concluded that there is a substantial likelihood that the required zoning relief would be granted and the Appraiser should set forth the basis of that opinion in the Report. In the event of a partial acquisition or taking, the Highest and Best Use of the remaining portion of land should be stated, including the reasons why the Highest and Best Use remains the same or has changed by virtue of said partial acquisition. This determination must be undertaken in conformance with a Highest and Best Use analysis described herein.
- B. Value Estimate by Market Approach: This section of the Report should determine market value of the subject property according to the following analyses.
 1. Direct Sales Comparison - The Appraiser's opinion of the value of the land must be supported by confirmed sales of comparable, or nearly comparable lands having like optimum uses. In general, a minimum of five comparable sales is required. In special circumstances, however, a lesser number may be used. Where a lesser number is used, acceptable reasons must be given why other comparable sales are not available. No comparable sales should be used which are older than three years, except under unusual circumstances, which circumstances should be fully explained in the Report. All comparable sales

used must be personally inspected and photographed by the Appraiser and should be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms and conditions of sale, and the Report should indicate by whom confirmation was given. Include these references in the Report addenda. The following information and steps must be included:

- i. A summary of comparable sales (lots and acreage) and perimeter sketches (include in Addenda);
 - ii. A map showing the location of the comparable sales (and the subject property, if appropriate);
 - iii. A table or chart showing all relevant adjustments, including changed market conditions, or time. Care should be taken to qualify sales of improved property to eliminate price increases or decreases due to exceptional additional, renovation, rehabilitation, casualty or depreciation of the improvements; and
 - iv. A discussion in detailed, narrative form, discussing such factors as:
 - time
 - location (desirability, view, etcetera)
 - zoning and other land use controls
 - frontage (water or road)
 - topography, including soil type
 - utilities (water, gas, electric, sewer)
 - cost of extending or installing utilities
 - financing (mortgage back, etcetera)
 - proposed use intended by the grantee at time of acquisition and present use
 - whether it is a contingency sale based on future development of individual lots - the adjustments must not be excessive in relation to the type of property being appraised and the market data available.
 - v. Sales from neighboring towns may be used if necessary, providing that adjustments are made for different market characteristics, zoning, and other relevant factors.
2. Cost of Development Approach - Where the direct sales approach cannot account for the development potential of the subject property, determine the value of the property by use of the development less costs method (a/k/a "cost of development" or "anticipated use" method). Where such method is employed, include the following steps and information:
- i. Determination of the gross sales value of each lot within the subdivision based on data collected by the direct sales approach, and determination of the net value to the developer after deducting costs (e.g., engineering, construction, marketing, legal, financial and other carrying costs), as well as a percentage for the developer's profit (i.e., return on investment). In determining net value to the developer, extreme care must be exercised in estimating annual cash flow: front end costs may make the use of averages inappropriate. Also, the discount rate must primarily reflect the discounted current value of future income. The risk factor in a theoretical subdivision must be accounted for in the developer's profit rather than in the discount rate.
 - ii. Confirmation of cost figures with professionals in the pertinent field and with local developers.
 - iii. Substantiation of development capacity of the subject property through engineering reports and land use planning.
 - iv. If a separate land planning element of the Report is not prepared, a sketch or plan showing the subdivision of the subject property to illustrate the number, location and size of the lots upon which the Report is based must be included.
3. Value Comparison and Summary
- i. The estimate of value arrived at by means of the Development Approach should be compared on a per acre basis with the value arrived at by the Direct Sales Comparison Approach.
 - ii. If the values do not closely agree, the reason for the divergence must be fully explained.

This section may be omitted if the Appraiser determines that use of the market approach is inappropriate; provided, however, the Report clearly states the reasons for such determination.

- C. Value Estimate by Cost Approach: This section must be in the form of commutative data concerning construction or building materials arranged in sequence (i.e., original cost, depreciation, and current values) and including reproduction or replacement cost, and must state the source (book and page if a national service) of all figures

used. If an acquisition by eminent domain is possible, the Appraiser should employ a cost estimator or engineer to determine the cost new. The dollar amounts of physical deterioration and functional and economic obsolescence, or the omission of same, should be explained in narrative form. This procedure may be omitted on improvements, both real and personal, for which only a salvage or scrap value is estimated.

This section may be omitted if the Appraiser determines that use of the cost approach is inappropriate; provided, however, the Report clearly states the reasons for such determination.

- D. Value Estimate by Income Approach: This section of the Report must include adequate factual data to support each figure and factor used and must be arranged in detailed form to show at least (a) estimated gross economic rent or income, (b) allowances for vacancy and credit losses; and (c) itemized estimate of total expenses, including reserves for replacements. All data must be source documented and justified. In reference to comparable rental properties, include the name of the lessor, the lessee, the terms and date of the lease, and verification thereof.

Capitalization of net income must be based upon the type of property and location similar to the subject property. The capitalization technique, method and rate used should be fully explained in narrative form, supported by a statement of sources of rates and factors. Include adequate documentation to support the income, expenses, interest rate, remaining economic life and capitalization rate. Where it is determined that the economic rental income is different from the existing or contract income, the increase or decrease must be explained and supported by market information.

This section may be omitted if the Appraiser determines that use of the income approach is inappropriate; provided, however, the Report clearly states the reasons for such determination.

- E. Interpretation and Correlation of Estimates: Interpret the foregoing estimates and should state the reasons why one or more of the conclusions reached are indicative of the market value of the property. Include a summary of the data seen by the Appraiser to be most pertinent to the appraisal assignment. A clear explanation of how the data are interpreted, weighted and mathematically treated to reach the value conclusion must be provided.
- F. Less than Fee Acquisitions: Where the appraisal assignment is for determination of the value of less than fee interests in land (e.g., conservation restrictions), the Appraiser must determine the value of this interest by use of the before and after method. The Appraiser must fully detail the analysis of the highest and best use of the subject property without the restriction or easement as described herein, and clearly explain any changes in the highest and best use after imposition of the restriction or easement.
- G. Severance Damages: If the property being appraised is a partial acquisition or taking, or is a separate parcel but physically contiguous to other land of the owner, or is under the same ownership but physically non-contiguous to other land of the owner (but which may add value to the non-contiguous parcel, e.g., by providing access to a body of water), severance damages must be fully described and discussed. The method of value estimation should be the before and after method. The amount of the severance damages should be determined mathematically as well as described in narrative form.
- H. Enhancement: The Appraiser should investigate and determine whether the acquisition will enhance the value of the remaining property of the owner. If so, the method of value estimation must be the before-and-after method. The Report must set forth the enhancement value separately, with a full discussion and analysis of the factors giving rise to the enhancement.
- I. Changes in Valuation Caused by the Public Use or Improvement: Notwithstanding subsections F. and G. above, any change in the fair market value of real property prior to the date of valuation caused by the public use or improvement for which such property will be acquired, or by the likelihood that the property would be acquired for such use or improvement, will be disregarded in determining fair market value of the property.

V. EXHIBITS AND ADDENDA TO BE INCLUDED IN EACH REPORT

All maps and plans may be bound as facing pages opposite the description, tabulation or discussions they concern.

- A. Subject Location Map (within the city or area)

- B. Comparative Map Data (show geographic location of the subject property and the comparative parcels analyzed).
- C. Detail of the Comparative Data
 - 1. Color Photograph of the Property (in the case of unimproved woodland, a photograph across the frontage showing the road frontage and surrounding area)
 - 2. Grantor
 - 3. Grantee
 - 4. Date of Sale
 - 5. Recording Data
 - 6. Source of Information
 - 7. Breakdown of Sales Price
 - i. amount to land
 - ii. amount to improvements
 - 8. Terms of Sale
 - 9. Improvements at Time of Sale
 - 10. Use of property
 - 11. Zoning
 - 12. Description of property
 - i. size
 - ii. shape
 - iii. amount of frontage
 - iv. topography
 - v. utilities available
 - vi. amenities
 - vii. assessed value
- D. Plot Plan: The plot plan should include the approximate location of any improvements, easements, right of ways, flood plain zoning lines, and/or other encumbrances that exist or have been placed upon the property.
- E. Deed
- F. Floor Plans (when needed to explain the value estimates)
- G. Flood Plain Zoning Map (where applicable)
- H. Local Zoning (excerpts as required to support the appraisal)
- I. References (detail the sources from which the Appraiser drew information contained in the Report. Where information is from an office or individual, the appraiser should identify the name, address, capacity and telephone number of the source of such information. Also list junior appraisers, researcher, etc. who assisted in preparation of the report)
- J. Other Pertinent Exhibits (e.g., timber cruise, land planning report, engineering report)
- K. A Resume of Qualifications (for all appraisers and other experts contributing to the determination of value in the Report).
- L. Owner's Property Inspection Certificate: The appraiser must invite the landowner or his or her representative to accompany the appraiser during inspection of the property. To allow the landowner time to make the necessary arrangements, the invitation should be made appropriately in advance of the planned inspection date. Reasonable efforts should be made to include the landowner or his or her representative in the inspection. The appraiser should consider any information the landowner may provide which is relevant to the issue of the value of the property inspected. However, the appraiser must use his or her best judgment as to the usefulness of any information provided by the landowner. See Exhibit 2.

VI. REPORTS OTHER THAN COMPLETE, SELF-CONTAINED

Reports other than Complete, Self-Contained appraisal reports must be prepared in compliance with the then current Uniform Standards of Professional Appraisal Practice (USPAP). Such reports may include complete appraisals in Summary or Restricted reports, or limited appraisals in Self-Contained, Summary or Restricted reports.

EXHIBIT I

CERTIFICATE OF VALUE

OWNER(S):

ADDRESS/LOCATION OF PROPERTY:

I, _____ HEREBY CERTIFY THE FOLLOWING: THAT ON _____, I PERSONALLY MADE A FIELD INSPECTION OF THE PROPERTY HEREIN APPRAISED AND HAVE AFFORDED THE OWNER THE OPPORTUNITY TO ACCOMPANY ME ON THIS INSPECTION;

That to the best of my knowledge and belief, the statements contained in the appraisal here set forth are true, and the information upon which the opinions expressed herein are based in correct, subject to the limiting conditions therein set forth;

That I understand that such appraisal may be used in connection with acquisition of the subject property by the City/Town of Massachusetts;

That such appraisal has been made in conformity with the appropriate state laws, regulations, policies, specifications and procedures;

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein;

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised; and

THAT MY OPINION OF THE VALUE OF THE PROPERTY AFFECTED BY THE PROPOSED ACQUISITION OR TAKING, AS OF THE _____ DAY OF _____, 20__ IS _____, AND THAT THE CONCLUSIONS SET FORTH IN THIS APPRAISAL ARE BASED UPON THE EXERCISE OF MY INDEPENDENT PROFESSIONAL JUDGMENT.

SIGNATURE _____

DATE _____

EXHIBIT 2: OWNER'S PROPERTY INSPECTION CERTIFICATE

1. _____ ()
Name(s) of Supposed Owner(s) Telephone Number with Area Code

Address
Town/City State Area Code

2. Please check appropriate line

_____ I wish to accompany the appraiser on an inspection of my property.

_____ I wish to have my representative accompany the appraiser(s) on an inspection of my property.
(Please fill in Item 3.)

_____ I do not wish to accompany the appraiser(s) on an inspection of my property.

3. _____ ()
Name of Authorized Representative Telephone Number with Area Code

Address
Town/City State Area Code

4. The following individuals and/or entities occupy the premises in accordance with an agreement as indicated
(lease, life estate, etc.):

a. _____ b. _____
Name of Individual or Entity Name of Individual or Entity

_____ Occupied Premises _____ Occupied Premises

_____ Type of Agreement _____ Type of Agreement

5. I certify that I have given the above-referenced tenants or occupants notice of the appraiser's inspection of the property.

Name(s) of Supposed Owner(s)

6. I hereby authorize the appraiser to enter and inspect the property, after reasonable notice, for the purposes of preparing an appraisal.

Owner's Signature Date

Attachment D: Requirements for acquisition projects funded through the Community Preservation Act (CPA)

The Community Preservation Act (CPA) states that land acquired with CPA funds must be bound by a permanent restriction (see excerpt of act below). Property acquired with the help of the DWSP grant program is protected Article 97 conservation land, however, this does not supersede the requirements of the Community Preservation Act. The CPA requires that, for fee acquisitions, the municipality convey a Ch. 184 CR to a qualified 501(c)(3) organization whose purpose is land and/or water conservation (e.g., land trusts). It may not be an internal deed restriction. Fulfillment of the CPA is the responsibility of the municipality. **Conveyance of a CR to a qualified entity is required for reimbursement under this grant program.**

Conveying a conservation restriction over water supply land or “parkland” normally would trigger the formal “Article 97” disposition process requiring a 2/3 vote of the legislature. However, for guidance, EEA refers municipalities to the opinion of the Massachusetts Land Trust Coalition Attorney Referral Panel that states: “If a municipality acquires property under the CPA statute, it is required to impose a restriction on the property as a matter of law and thus the imposition of the restriction should be considered part of an integrated plan for dealing with the property. Therefore, the imposition of the restriction should not be considered a “disposition” of an interest in the property within the meaning of Article 97.”¹ All municipalities should seek final advice on this issue from its town counsel or its city solicitor.

Points to remember when conveying a Conservation Restriction:

1. At the same time that it votes to acquire the property, the municipality should vote to authorize the grant of the CR and also indicate that the purchase of the property and conveyance of the CR be a simultaneous closing.
2. The deed to the municipality should indicate that the municipality may grant a CR to the specific entity identified to hold it or to an entity authorized to hold a CR under M.G.L. Ch. 184.
3. As long as a restriction is recorded **after** the recording of the deed of acquisition (even if immediately after), the unrestricted value (and therefore higher value) of the property is used for funding determinations in DCS grant programs.
4. The fact that the funding statute *requires* the restriction may mean that a party seeking a charitable contribution deduction in connection with a bargain sale of property may not be able to use the unrestricted value of the property in calculating the tax benefit.
5. The “proceeds” clause of the conservation restriction, if conveyed at no cost to the grantee, must provide that the municipality (as the fee owner) receives all of the proceeds of an extinguishment or taking, and the grantee receives none of such proceeds. In the event that the land ever is converted to non-conservation use, the municipality would still be responsible for replacing the converted property with land of equal or greater monetary value and conservation use and described in the Program Regulations, as though the land were owned in fee simple. Applicants should consult with DCS for guidance on drafting conservation restrictions for the appropriate language.

¹ Attorney Greg Bialecki and the Attorney Referral Panel of the Massachusetts Land Trust Coalition – Visit the Massachusetts Land Trust Coalition website at www.massland.org, or <http://www.massland.org/pages/resources/legaladvisory3.html> for this legal advisory.

Community Preservation Act

Section 12 of the Chapter 44B Real property interest; deed restriction; management

(a) A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184 limiting the use of the interest to the purpose for which it was acquired. The permanent restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The permanent restriction may also run to the benefit of a nonprofit organization, charitable corporation or foundation selected by the city or town with the right to enforce the restriction. The legislative body may appropriate monies from the Community Preservation Fund to pay a non-profit organization created pursuant to chapter 180 to hold, monitor and enforce the deed restriction on the property.

(b) Real property interests acquired under this chapter shall be owned and managed by the city or town, but the legislative body may delegate management of such property to the conservation commission, the historical commission, the board of park commissioners or the housing authority, or, in the case of interests to acquire sites for future wellhead development by a water district, a water supply district or a fire district. The legislative body may also delegate management of such property to a nonprofit organization created under chapter 180 or chapter 203.

Attachment E: Summary of Hydrologic Soil Groups and Infiltration Rates For Groundwater Recharge Projects

Hydrologic soil groups (HSGs) are based on estimates of runoff potential. Groupings are made under the premise that soils found within a climatic region that are similar in depth to a water impermeable layer or water table, water transmission rate, structure, texture, and degree of swelling when saturated, will have similar runoff responses. Soils are assigned to one of four groups based upon the rate of water infiltration when the soils are thoroughly wet, not frozen, unvegetated, and under maximum swelling of expansive clays. There are four HSGs (A, B, C, and D), and three dual classes (A/D, B/D, and C/D), defined below:

Group A. Soils having a high infiltration rate (low runoff potential) when thoroughly wet. These consist mainly of deep, well drained to excessively drained sands or gravelly sands. These soils have a high rate of water transmission.

Group B. Soils having a moderate infiltration rate when thoroughly wet. These consist chiefly of moderately deep or deep, moderately well drained or well drained soils that have moderately fine texture to moderately coarse texture. These soils have a moderate rate of water transmission.

Group C. Soils having a slow infiltration rate when thoroughly wet. These consist chiefly of soils having a layer that impedes the downward movement of water or soils of moderately fine texture or fine texture. These soils have a slow rate of water transmission.

Group D. Soils having a very slow infiltration rate (high runoff potential) when thoroughly wet. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table, soils that have a claypan or clay layer at or near the surface, and soils that are shallow over nearly impervious material. These soils have a very slow rate of water transmission.

If a soil is assigned to a dual hydrologic group (A/D, B/D, or C/D), the first letter is for drained areas and the second is for undrained areas. Only the soils that in their natural condition are in group D are assigned to dual classes.

The following summary is drawn from US Department of Agriculture, Natural Resources Conservation Service. 2007. *National Engineering Handbook, Part 630 Hydrology, Chapter 7, Hydrologic Soil Groups*. 210-VI-NEH, For more detailed information, go to <http://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17757.wba>.